

ASSEMBLY BILL

No. 1059

**Introduced by Committee on Agriculture (Matthews (Chair),
Maze (Vice Chair), Berg, Blakeslee, Cogdill, Parra, Salinas, and
Vargas)**

February 22, 2005

An act to amend Section 56382.5 of the Food and Agricultural Code, relating to growers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as introduced, Committee on Agriculture. Agriculture: growers' complaints.

Existing law provides that a grower or licensee with a complaint not subject to specified federal jurisdiction may, subject to specified procedures, file the complaint with the Food and Agriculture Department. Existing law also provides for alternate dispute resolution under certain circumstances.

This bill would require the department, when issuing its written factual summary to the parties, to include a proposed settlement amount if one can be determined, and if that amount is \$30,000 or less.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 56382.5 of the Food and Agricultural
- 2 Code is amended to read:
- 3 56382.5. (a) An aggrieved grower or licensee with a
- 4 complaint that is not subject to the federal Packers and

1 Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal
2 Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec.
3 499a et seq.) may seek resolution of that complaint by filing a
4 complaint with the department within nine months from the date
5 a complete account of sales was due. The complaint shall be
6 accompanied by two copies of all documents in the
7 complainant's possession that are relevant to establishing the
8 complaint, a filing fee of sixty dollars (\$60), and a written denial
9 of jurisdiction from the appropriate federal agency unless the
10 commodity involved clearly does not fall under the federal
11 Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or
12 the federal Perishable Agricultural Commodities Act, 1930 (7
13 U.S.C. Sec. 499a et seq.). Within five business days of receipt of
14 a signed and verified complaint, the filing fee, and the denials of
15 federal jurisdiction, the department shall serve the verified
16 complaint on the respondent. Service shall be by certified mail.
17 The department, the secretary, the department's employees, the
18 department's agents, the boards and commissions associated with
19 the department, their employees or agents, and the State of
20 California are not parties to the dispute in a proceeding brought
21 under this section.

22 (b) The respondent served shall answer within 30 calendar
23 days of service. Respondent's response shall include two copies
24 of all relevant documentation of the transactions referred to in the
25 verified complaint.

26 (c) Within 30 calendar days of receipt of the answer, the
27 department shall issue to both parties a written factual summary
28 on the basis of the documents that have been filed with the
29 department, *including a proposed amount of settlement if one can*
30 *be determined from the information available to the department*
31 *and if that amount is \$30,000 or less.*

32 (d) If a settlement is not reached within 30 calendar days after
33 the department's summary is issued, the department, on request
34 of the claimant or respondent and upon payment of a filing fee of
35 three hundred dollars (\$300), shall schedule alternate dispute
36 resolution, to commence within 90 calendar days. The
37 department shall serve both parties with a notice of hearing,
38 which sets out the time, date, street address, room number,
39 telephone number, and name of the hearing officer. Service of
40 the notice of hearing shall be by certified mail.

1 (e) The alternate dispute resolution shall proceed as follows:

2 (1) The hearing shall be conducted by hearing officers in
3 accordance with standard procedures promulgated by the
4 American Arbitration Association or other acceptable alternative
5 dispute resolution entities.

6 (2) The hearing officers shall be familiar with the type of
7 issues presented by such claims, but need not be attorneys.

8 (3) The sole parties to the proceedings shall be the
9 complainant and the respondent.

10 (4) The disputes, claims, and interests of the department or the
11 State of California are not within the jurisdiction of the
12 proceedings.

13 (5) The validity of a regulation of the department or order
14 promulgated pursuant to this code is not within the jurisdiction of
15 the proceedings.

16 (6) Law and motion matters shall be handled by the assigned
17 hearing officer.

18 (7) The hearing officer has no authority to enter into
19 settlement discussions except upon stipulation of the parties
20 involved.

21 (8) The parties may represent themselves in propria persona or
22 may be represented by a licensed attorney at law. A party may
23 not be represented by a representative who is not licensed to
24 practice law.

25 (9) To the extent of any conflict between any provision of
26 Chapter 4.5 (commencing with Section 11400) of Part 1 of
27 Division 3 of Title 2 of the Government Code and this article,
28 this article shall prevail.

29 (10) The hearing officer may order a review of records or an
30 audit of records by a certified public accountant. The review or
31 audit shall be conducted under generally accepted auditing
32 standards of the American Institute of Certified Public
33 Accountants, and upon completion of the review or audit the
34 nature and extent of the review or audit shall be disclosed to the
35 parties by the auditor in the audit report. The audit report shall
36 disclose the number of transactions reviewed and the rationale
37 for selecting those transactions. The department shall advance the
38 costs of the audit or review of records, but the hearing officer
39 shall apportion the costs at the conclusion of the hearing. The
40 department shall pursue repayment in accordance with the

1 hearing officer's apportionment and may bring an action in a
2 court of competent jurisdiction to recover funds advanced.
3 Nothing in this subdivision shall be construed to require the
4 department to pursue any specific remedy or to prohibit the
5 department from accepting a reasonable repayment plan.

6 (f) The hearing officer shall render a written decision within
7 60 days of submission of the case for decision. In addition to
8 rendering a written finding as to what is owed by whom on the
9 substantive allegations of the complaint, the hearing officer shall
10 decide whether or not to order the full cost of the alternative
11 dispute resolution proceeding, and in what ratio or order the
12 losing party is to pay the costs of the proceeding. For these
13 purposes, the cost of the alternative dispute resolution proceeding
14 does not include the filing fee, the parties' attorney fees, or
15 expert witness fees. The hearing officer may also award a
16 sanction against a complainant for filing a frivolous complaint or
17 against a respondent for unreasonable delay tactics, bad faith
18 bargaining, or resistance to the claim, of either 10 percent of the
19 amount of the award or a specific amount, up to a maximum of
20 one thousand dollars (\$1,000). Any sanction award shall not be
21 deemed to be res judicata or collateral estoppel in any subsequent
22 case in which either the complainant or respondent are charged
23 with filing a frivolous complaint, unreasonable delay tactics, bad
24 faith bargaining, or resistance to the claim. The department may
25 consider the written decision of the hearing officer in
26 determining any related licensing action. The written decision of
27 the hearing officer may be introduced as evidence at a court
28 proceeding.

29 (g) Nothing in this section prohibits the parties to the dispute
30 from settling their dispute prior to, during, or after the hearing.

31 (h) Nothing in this section alters, precludes, or conditions the
32 exercise, during any stage of the proceedings provided by this
33 chapter, of any other rights to relief a party may have through
34 petition to a court of competent jurisdiction, including, but not
35 limited to, small claims court.